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10/671,211	09/25/2003	Jose Carlos de Azevedo	J&J5040	6959

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EXAMINER

SAMALA, JAGADISHWAR RAO

ART UNIT	PAPER NUMBER
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1618

MAIL DATE	DELIVERY MODE
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07/23/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/671,211	Applicant(s) DE AZEVEDO ET AL.	
	Examiner Jagadishwar R. Samala	Art Unit 1618	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____ |

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DETAILED ACTION

Election Acknowledged

1. Applicant's election with traverse of species (1) thickener –polyether-1, (2) cationic polymer- polyquaternium – 10, and (3) silicones-amodimethicone in the reply filed on June 01, 2007 is acknowledged. The traversal is on the ground(s) that searching of the species for combing hair is not burden. This is not found persuasive because claims 1-15 differ in scope as indicated by their distinct modes of operation. As evidenced by (US 6,737,046 and US 6,287,545) the use of composition containing thickener, fatty alcohol, cationic surfactant, cationic polymer and silicones compositions for a hair treatment. The requirement is still deemed and is therefore made FINAL.

Claim Objections

2. Claim 6 is objected to because of the following informalities: claim 6, line 4, tetramethoxymethylglycouryl is misspelled. Appropriate correction is required.

Claim 11 is objected to because of the following informalities: Claim 11, line 3, cetyl alcohol + cetyltrimethyl ammonium chloride is misspelled. Appropriate correction is required.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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4. Claims 1-4, 8-9, 14 and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Newell et al. (US 5,968,486).

With respect to claims 1-4 and 8-9, Newell discloses a composition for lightening and highlighting hair comprising polymeric thickeners such as methylcellulose, hydroxyethylcellulose, hydroxypropylmethylcellulose and carboxy methylcellulose, acrylic acid derivatives and these thickeners are present in an amount from about 0.1% to about 10%, cationic polymers such as polyquaternium-10 and polymer JR 30M, fatty alcohols such as lauryl alcohol, cationic surfactants such as sodium c14-c16 olefin sulfonate, silicones humectants and moisturizers (see col 3, lines 1-15).

With respect to claims 14 and 15, Newell discloses a for hair lightening in the form of liquids, solutions, suspensions, dispersions, creams, gels, lotions, sols, mousse and the like. And composition further comprises fragrances, dyes, opacifiers, including fatty esters and latexes, pearlescing agents, dandruff control agents, hydrotropes, foam stabilizers, solubilizers, preservatives, water softening agents, and the like (see col 3, lines 20-38). These disclosures render the claims anticipation.

5. Claims 1-6 and 8-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Su (US 6,287,545 B1).

With respect to claim 1, Su discloses hair conditioner compositions comprising a thickener such as PEG-25, fatty alcohols such as cetyl alcohol, stearyl alcohol, and the like, and cationic surfactant such as cetyl trimethyl ammonium chloride, dicetyl dimethyl

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ammonium chloride, distearyl dimethyl ammonium chloride, or other long chain dialkyl quaternary salts (see col 3, lines 27-60 and col 6, lines 30-50).

With respect to claims 2-6 and 8-11, Su discloses hair conditioner compositions comprising a cationic polymer like polyquaterniums (polyquaternium-10) and a silicones such as dimethicone, cyclomethicone and the like (see col 4, line 1-5) and also non-ionic, hydrophobic thickeners such as methyl cellulose hydroxyethyl cellulose, hydroxypropyl methylcellulose, sodium carboxymethyl cellulose, PEG-25 and the like (see col 4, line 19-24 and col 6, lines 30-50).

With respect to claims 12 and 13, Su discloses a hair conditioner composition comprising a thickener agent at concentration of about 0.25%, fatty alcohols in a range of about 1% -10%, cationic polymer in a range of about 0.01% -3% and silicones in a range of about 0.1%-5% (see col 6, lines 30-50).

With respect to claims 14 and 15, Su discloses a hair conditioner composition in the form of aqueous emulsions comprising quaternary ammonium salts, unctuous materials-particularly fatty alcohols, viscosity agents, surfactants or emulsifiers, protective colloids or thickening compounds, esters as stabilizers, fragrance and preservative and thereof (see col 1, lines 50-60 and col 6, lines 30-50). These disclosures render the claims anticipation.

Claims 1-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Schmenger et al (WO-01/52800, relied on Machine English translation of the German Document).

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With respect to claim 1, Schmenger discloses a composition for hair treatment comprising thickener, fatty alcohol and a cationic surfactant (see page 1, para 4 and 9).

With respect to claims 2-10, Schmenger discloses a composition for hair treatment comprising cationic polymer preferably as hair strengthening or hair-conditioning polymers, and hair care silicon compound (see page 1, para 8). And also, discloses thickeners such as polyether-1 (PURE THIX™ HH, L and M) PEG-180. (see page 2, para10). The associative thickener is preferably contained in the composition in an amount from 0.1% - 5% (see page 1, para 9). The cationic polymers include polyquaternium-10 (sold by Amerchol under the name polymer JR, see page 3, para 9). The cationic polymers preferably contained in the composition in an amount of 0.01% - 10% (see page 1, para9). And also, discloses cationic silicone compound such as amodimethicone (see page4, para 8). The silicone compound preferably contained in the composition in an amount of 0.01%-10% (see page 1, para 9). These disclosures render the claims anticipation.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

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only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7. Claims 1-6, 8-9 and 12-15 are rejected under 35 U.S.C. 102(e) as being anticipated by Michael (US 2001/0043912 A1).

With respect to claim 1-6, Michael discloses a hair care composition comprising non-ionic, hydrophobic thickener (see 0098) a fatty alcohol (see 0064), cationic surfactant (see 0067) and non-volatile polysiloxane resin selected from group consisting of dimethicone copolyols (see 0013). And also discloses the thickener PEG-modified triglycerides such as PEG-25 glyceryl trioleate (see 0058).

With respect to claims 8-9, 12 and 13, Michael discloses the hair care composition comprising cationic polymer including cationic polysaccharide polymers, such as cationic cellulose derivatives as polyquaternium-10 and cationic starch derivative (see 0088 and 0092). The composition comprising thickener in an amount ranging from 0.02% - 1 %, fatty alcohol from about 1% -10%, cationic surfactant 0.1% - 3%, cationic polymer from about 0.5% - 10% and silicon from about 0.001% - 5% (see 0011, 0064, 0067, 0075 and 0095).

With respect to claims 14 and 15, Michael discloses hair-care composition encompass any composition form intended for human use on hair including for e.g. tonics, creams, and balms (see 0026). And also compositions comprises additional formulation aiding components such as surfactants, salts, buffers, thickeners, solvents, opacifiers, pearlescent aids, preservatives, fragrance, colorants, dyes, pigments, chelators, sunscreens, vitamins, and medicinal agents (see 0106). Therefore, all the

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critical elements as required by the instant claims are taught by the cited reference and claims are thus anticipated.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

10. Claims 1-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Newell et al. (US 5,968,486) and Bertolosso et al. (US 2001/0056048 A1) in view of Schmenger et al (WO-01/52800, relied on English translation of the German Document).

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Claims are drawn to a composition for combing hair comprising a thickener, a fatty alcohol, a cationic surfactant, a cationic polymer and a silicone.

Newell discloses a composition for lightening and highlighting hair as discussed above.

Bertolosso discloses a hair treatment composition comprising fatty alcohols such as cetyl alcohol, stearyl alcohol and mixtures thereof (see 0117) cationic surfactants such as cetyltrimethylammonium chloride, behenyltrimethylammonium chloride, cetylpyridinium chloride and thereof (see 0113), cationic polymers such as polyquaternium-10, polyquaternium 16 and thereof (see 0095-0103), amino functionalized silicone such as amodimethicone (see 0016), and viscosity modifiers, preservatives, polyols such as glycerine and polypropylene glycol, antioxidants such as vitamin E acetate, fragrances and thereof (see 0120).

Newell and Bertolosso meets the claim limitations as described above but fails to include polyether-1 in the hair treatment composition.

However, Schmenger discloses a hair treatment composition comprising thickener such as polyether-1. The composition can be used as a leave-in hair treatment or as a hair rinse condition the hair and confers to its luster and volume.

Compositions of the invention show superior conditioning and also superior selectivity in conditioning performance. Further the use of nonionic amphiphilic associative thickeners such as polyether-1, in the composition provides conditioning effect in the best manner and shows improved emulsification during use. After the treatment, the

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hair, in both the moist and the dry state, is noticeably smoother, and the wet combability is noticeably improved.

When these references are taken together, one would have been motivated to extend Schmenger's teaching to add a polyether-1 thickener, which may provide esthetic properties and desirable physical properties to the compositions. As suggested by cited references, one would have reasonably expected successful addition of thickener (polyether-1) because the effectiveness, extra benefits (to improve the stylability, combability, luster and feel of the treated hair) and safety are already well proven and are well suggested by latter references cited.

One would have been motivated to combine these references and make the modification because they are drawn to same technical fields (constituted with same ingredients and share common utilities), and pertinent to the problem which applicant concerns about. MPEP 2141.01 (a).

Conclusion

1. No claims are allowed at this time.
2. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jagadishwar R. Samala whose telephone number is (571)272-9927. The examiner can normally be reached on 8.30 A.M to 5.00 P.M.

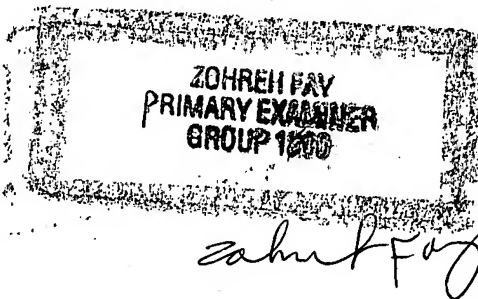
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G. Hartley can be reached on (571)272-0616. The fax phone

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number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

sjr



Jagadishwar R Samala
Examiner
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